

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALI ALTAYE,
Plaintiff,

v.

DORA PENSAMIENTO, et al.,
Defendants.

Case No. [5:18-cv-01679-EJD](#)

ORDER TO SHOW CAUSE

The instant action was removed to this court by Defendants Dora Pensamiento, Carlos Marroquin, and Selvin Marroquin, doing business as Brother's Truck and Trailer Repair. As it must, the court has reviewed the Notice of Removal and other relevant pleadings to determine whether Defendants have adequately established a basis for subject matter jurisdiction. See Henderson v. Shinseki, 562 U.S. 428, 434 (2011) ("[F]ederal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press."); see also Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002) ("[A] court may raise the question of subject matter jurisdiction, sua sponte, at any time during the pendency of the action, even on appeal."). They have not.

"Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). "[S]ubject-matter jurisdiction refers to the court's statutory or constitutional power to adjudicate the case." Pistor v. Garcia, 791 F.3d 1104, 1110-11 (9th Cir. 2015) (internal quotations omitted). Consistent with a federal court's limited jurisdiction, "removal is permissible only where original jurisdiction exists at the time of removal." Lexecon

Case No.: [5:18-cv-01679-EJD](#)
ORDER TO SHOW CAUSE

1 Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 43 (1998). “Where doubt regarding
2 the right to removal exists, a case should be remanded to state court.” Matheson v. Progressive
3 Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003); see 28 U.S.C. § 1447(c) (“If at any time
4 before final judgment it appears that the district court lacks subject matter jurisdiction, the case
5 shall be remanded.”)

6 Defendants state in the Notice of Removal that this court has subject matter jurisdiction
7 under 28 U.S.C. § 1332. “For a case to qualify for federal jurisdiction under 28 U.S.C. § 1332(a),
8 there must be complete diversity of citizenship between the parties opposed in interest.” Kuntz v.
9 Lamar Corp., 385 F.3d 1177, 1181 (9th Cir. 2004). Consequently, Defendants must “allege
10 affirmatively the actual citizenship of the relevant parties.” Kanter v. Warner-Lambert Co., 265
11 F.3d 853, 857 (9th Cir. 2001); accord DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 n.3
12 (2006) (Because “federal courts lack jurisdiction unless the contrary appears affirmatively from
13 the record, the party asserting federal jurisdiction when it is challenged has the burden of
14 establishing it.”).

15 Furthermore, a case “may not be removed if any of the parties in interest properly joined
16 and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. §
17 1441(b)(2). Stated differently, “the presence of a local defendant at the time removal is sought
18 bars removal.” Spencer v. U.S. Dist. Ct. for N. Dist. of Cal., 393 F.3d 867, 870 (9th Cir. 2004).

19 Here, Defendants indicate in the Notice of Removal that Dora Pensamiento, Carlos
20 Marroquin and Selvin Marroquin are each residents of California. This representation is
21 problematic for two reasons. First, statements revealing an individual’s residence, as opposed to
22 their domicile, fail to confirm diversity of citizenship. See Kanter, 265 F.3d at 857 (“The natural
23 person’s state citizenship is [] determined by her state of domicile, not her state of residence.”).
24 Second, if as the court suspects Defendants are each citizens of California rather than merely
25 residents of the state, they were not permitted to remove this action originally filed in California
26 state court. See 28 U.S.C. § 1441(b)(2).

27 Because Defendants have not satisfied their obligation to affirmatively demonstrate federal

1 subject matter jurisdiction, the court issues an order to show cause why this action should not be
2 remanded. If Defendants do not, by **April 4, 2018**, file an amended Notice of Removal that
3 establishes this court's jurisdiction in a manner consistent with the preceding discussion, the court
4 will remand this action to Santa Clara County Superior Court. See 28 U.S.C. § 1653.
5 No hearing will be held on the order to show cause unless otherwise ordered by the court.

6
7 **IT IS SO ORDERED.**

8 Dated: March 30, 2018

9 

10 EDWARD J. DAVILA
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27